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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 16

Application Number: 09/256,896
Filing Date: February 24, 1999
Appellant(s): THOEMMES ET AL.

Jason S. Feldmar
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

Pursuant to the Remand under 37 CFR 1.193(b)(1) by the Board of Patent Appeals and Interferences on 7/13/2004, a supplemental Examiner's Answer is set forth below:

This is in response to the appeal brief filed 12/22/2003 and supplemental Reply Brief filed 5/27/2004. The Response to the Reply Brief issued 3/14/2004 has been vacated.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-38 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

(9) Prior Art of Record

5,463,722	Venolia	10-1995
6,031,531	Kimble	2-2000
5,123,087	Newell et al	6-1992

Merriam Webster's Collegiate Dictionary, Tenth Edition

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

10.1 Claims 36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Venolia (5,463,722).

10.2 As per claim 36, Venolia discloses a method of acquiring a data point of interest on a drawing object, comprising the steps of:

accepting a modifier command ("keyboard commands or menu selections for creating and breaking such multiple object alignments", column 22, line 9-11); and

acquiring the data point of interest on a drawing object in a computer-implemented drawing program after a command is received to move a cursor near the data point (Figure 3 and "the user drags a vertex of a displayed object towards the vertex of another object ...", column 12, line 6-7 and "the vertex follows the cursor

exactly", column 12, line 21, the cursor moves, and the vertex follows the cursor; therefore, the vertex is acquired by the cursor), wherein the data point is not acquired without the modifier command ("once the user aligns two objects the system of the present invention could maintain the alignment and moves the two objects as a singe object or group as indicated by example (d) of Fig.10. This capability would preferably include an interface selection such as, for example, keyboard commands or menu selections for creating an breaking such multiple object alignments", column 22, line 4-11, without pressing down the keyboard, the objects are not aligned).

10.3 As per claim 38, Venolia demonstrated all the elements as applied in the rejection of independent claim 36, supra, and further discloses the modifier command comprises the depression of a keyboard key ("keyboard commands or menu selections for creating and breaking such multiple object alignments", column 22, line 9-11).

10.4 Claims 1, 2, 6-11, 13, 14, 18-22, 24, 25, 29-33, 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Venolia (5,463,722) in view of Kimble (6,031,531).

10.5 As per claim 1, Venolia discloses a method of acquiring a data point of interest on a drawing object, comprising the steps of:

accepting a command to move a cursor near the data point of interest on the drawing object in a computer-implemented drawing program (Figure 3 "the user drags a vertex of a displayed object towards the vertex of another object ...", column 12, line 6-7 and "the vertex follows the cursor exactly", column 12, line 21, therefore, the cursor moves, and the vertex follows the cursor); and

acquiring the data point after the cursor remains near the data point (Figure 3 "When point A moves within a certain distance, I, of point B, point C is automatically drawn by the present invention into alignment with point B", column 12, line 28-30).

Venolia discloses a method of acquiring a cursor when moved within a distance. As for "acquiring the data point after the cursor remains near the data point for an acquisition pause time", it is inherent that it takes processing time for the apparatus to acquire data point. Venolia is silent about the fact that acquiring data point requires time, however, this is known in the art as taught by Kimble. Kimble discloses acquiring a cursor after the cursor remains nears an object after a period of time (Figure 7 164, "By "dwelling on the icon/object (i.e., by not utilizing a switch or moving the cursor), the function associated with the icon/object upon which the cursor is "dwelling" is automatically activated", column 9, line 34-37).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kimble into Venolia because Venolia discloses a method of acquiring a cursor when the cursor is within a distance of an object and Kimble discloses a method of acquiring a cursor when the cursor is within a distance of an object after a period of time in order to easily access the object.

10.6 As per claim 2, Venolia and Kimble demonstrated all the elements as applied in the rejection of independent claim 1, supra, and Kimble further discloses the pause time is user-selectable ("The dwell time threshold may be adjusted by the user when configuring this particular feature", column 9, line 37-38).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kimble into Venolia because Venolia discloses a method of acquiring a cursor when the cursor is within a distance of an object and Kimble discloses a method of acquiring a cursor when the cursor is within a distance of an object after a period of user adjustable time in order to easily access the object.

10.7 As per claim 6, Venolia and Kimble demonstrated all the elements as applied in the rejection of independent claim 1, supra, and Kimble further discloses the step of acquiring the data point after the cursor remains near the data point for an acquisition pause time comprises the step of acquiring the data point after the cursor remains within an acquisition distance of the data point for an acquisition pause time (Figure 7 154).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kimble into Venolia because Venolia discloses a method of acquiring a cursor when the cursor is within a distance of an object and Kimble discloses a method of acquiring a cursor when the cursor is within a distance of an object after a period of time in order to easily access the object.

10.8 As per claim 7, Venolia and Kimble demonstrated all the elements as applied in the rejection of claim 6, supra, and Kimble further discloses the acquisition distance is determined according to a parameter selected from a group comprising magnification of a view of the object; and an object type ("The amount of cursor movement necessary to trigger the hop can be adjustable by the user", column 9, line

24-26, and "The size of the domains may also be altered, based on user preferences. The dimensions of the domains (i.e., circular, rectangular, vertically oriented for pull-down menu headings, etc.) may also be altered, based on user preferences", column 9, line 57-60).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kimble into Venolia because Venolia discloses a method of acquiring a cursor when the cursor is within a distance of an object and Kimble discloses a method of acquiring a cursor when the cursor is within a user selectable distance of an object after a period of time in order to easily access the object.

10.9 As per claim 8, Venolia and Kimble demonstrated all the elements as applied in the rejection of independent claim 1, supra, and Kimble further discloses the step of annotating the acquired data point with an acquisition indicator ("The icon is "magnetized" such that an area outlined by icon domain 65, with a diameter of perhaps two inches ... surrounds icon 70. When cursor object 63 is moved into the area outlined by icon domain 65, cursor object 63 is immediately "snapped" to the center of icon 70", column 7, line 33-39; by snapping the cursor to the center of the icon, it is consider an annotation).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kimble into Venolia because Venolia discloses a method of acquiring a cursor when the cursor is within a distance of an

object and Kimble discloses a method of annotating the acquired data point with an acquisition indicator in order to easily access the object.

10.10 As per claim 9, Venolia and Kimble demonstrated all the elements as applied in the rejection of independent claim 1, supra, and Kimble further discloses the step of unacquiring the data point after the cursor remains near the acquired data point for an unacquisition pause time ("the concept of "demagnetizing" an icon/object may be implemented", column 10, line 10-11).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kimble into Venolia because Venolia discloses a method of acquiring a cursor when the cursor is within a distance of an object and Kimble discloses a method of unacquiring a cursor when the cursor is within a distance of an object after a period of time in order to easily unaccess the object.

10.11 As per claim 10, Venolia and Kimble demonstrated all the elements as applied in the rejection of independent claim 1, supra, and Kimble further discloses the steps of:

accepting a command to move the cursor away from near the data point (Figure 7 152 where moving the cursor includes moving it away from the data point);

accepting a command to move the cursor near the data point (Figure 7 152 where moving the cursor includes moving it away from the data point); and

unacquiring the data point after the cursor remains near the data point for the unacquisition pause time ("the concept of "demagnetizing" an icon/object may be implemented", column 10, line 10-11).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kimble into Venolia because Venolia discloses a method of acquiring a cursor when the cursor is within a distance of an object and Kimble discloses a method of unacquiring a cursor when the cursor is within a distance of an object after a period of time in order to easily unacquire the object.

10.12 As per claim 11, Venolia and Kimble demonstrated all the elements as applied in the rejection of independent claim 1, supra.

As for "the unacquisition pause time is a different value than the acquisition pause time", the requirement is inherent since the pause times need to be different to differentiate from the acquiring time.

10.13 As per claim 13, Venolia discloses an apparatus for acquiring a data point of interest on a drawing object, comprising:

means for accepting a command to move a cursor near the data point of the drawing object in a computer-implemented drawing program (Figure 1 1610 where the CPU processes the command and Figure 3 "the user drags a vertex of a displayed object towards the vertex of another object ...", column 12, line 6-7 and "the vertex follows the cursor exactly", column 12, line 21, therefore, the cursor moves, and the vertex follows the cursor).

Venolia discloses a method of acquiring a cursor when moved within a distance. As for "acquiring the data point after the cursor remains near the data point for an acquisition pause time", it is inherent that it takes time for the apparatus to acquire data point. Venolia is silent about the fact that acquiring data point requires time, however,

this is known in the art as taught by Kimble. Kimble discloses acquiring a cursor after the cursor remains nears an object after a period of time (Figure 7 164, "By "dwelling on the icon/object (i.e., by not utilizing a switch or moving the cursor), the function associated with the icon/object upon which the cursor is "dwelling" is automatically activated", column 9, line 34-37).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kimble into Venolia because Venolia discloses a method of acquiring a cursor when the cursor is within a distance of an object and Kimble discloses a method of acquiring a cursor when the cursor is within a distance of an object after a period of time in order to easily access the object.

Regarding the "means plus function" language, the means refer to the software methods executed on generically disclosed hardware explicitly disclosed by Kimble. It is further noted that both software and hardware means are functionally equivalent.

10.14 As per claims 14 and 18-22, these are directed to an apparatus for performing the method of dependent claims 2 and 6-10, and therefore are identically rejected to claims 2 and 6-10, respectively.

Regarding the "means plus function" language, the means refer to the software methods executed on generically disclosed hardware explicitly disclosed by Kimble. It is further noted that both software and hardware means are functionally equivalent.

10.15 As per claim 24, Venolia discloses a program storage device (Figure 1 1616), readable by a computer, tangibly embodying at least one program of instructions executable by the computer in a drawing program to perform method steps of acquiring

a data point of interest on a drawing object (Figure 1 1610), the method comprising the steps of:

accepting a command to move a cursor near the data point of interest on the drawing object (Figure 1 1610 where the CPU processes the command and Figure 3 "the user drags a vertex of a displayed object towards the vertex of another object ...", column 12, line 6-7 and "the vertex follows the cursor exactly", column 12, line 21, therefore, the cursor moves, and the vertex follows the cursor).

Venolia discloses a method of acquiring a cursor when moved within a distance. As for "acquiring the data point after the cursor remains near the data point for an acquisition pause time", it is inherent that it takes time for the apparatus to acquire data point. Venolia is silent about the fact that acquiring data point requires time, however, this is known in the art as taught by Kimble. Kimble discloses acquiring a cursor after the cursor remains nears an object after a period of time (Figure 7 164, "By "dwelling on the icon/object (i.e., by not utilizing a switch or moving the cursor), the function associated with the icon/object upon which the cursor is "dwelling" is automatically activated", column 9, line 34-37).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kimble into Venolia because Venolia discloses a method of acquiring a cursor when the cursor is within a distance of an object and Kimble discloses a method of acquiring a cursor when the cursor is within a distance of an object after a period of time in order to easily access the object.

10.16 As per claims 25 and 29-33, these are directed to a program storage device, readable by a computer, since Venolia and Kimble's disclosure contain memory and control program (Figure 2 50 and 51), therefore they are similarly rejected as claims 2-10, respectively.

10.17 As per claim 35, Vanolia discloses a method of unacquiring an acquired data point, comprising the steps of:

accepting a command to move a cursor near the acquired data point of a drawing object in a computer-implemented drawing program (Figure 3 and "the user drags a vertex of a displayed object towards the vertex of another object ...", column 12, line 6-7 and "the vertex follows the cursor exactly", column 12, line 21, therefore, the cursor moves, and the vertex follows the cursor).

Venolia discloses a method of acquiring a cursor when moved within a distance. It is noted that Venolia does not explicitly disclose unacquiring the data point after the cursor remains near the acquired data point for an unacquisition pause time, however, this is known in the art as taught by Kimble. Kimble discloses unacquiring a cursor after the cursor remains nears an object after a period of time ("the concept of "demagnetizing" an icon/object may be implemented", column 10, line 10-11).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kimble into Venolia because Venolia discloses a method of acquiring a cursor when the cursor is within a distance of an object and Kimble discloses a method of unacquiring a cursor when the cursor is within a distance of an object after a period of time in order to easily unaccess the object.

10.18 As per claim 37, Venolia demonstrated all the elements as applied in the rejection of independent claim 36, supra.

Venolia discloses a method of acquiring a cursor when moved within a distance. It is noted that Venolia does not explicitly disclose acquiring the data point after the cursor remains near the data point for an acquisition pause time, however, this is known in the art as taught by Kimble. Kimble discloses acquiring a cursor after the cursor remains nears an object after a period of time (Figure 7 164, "By "dwelling on the icon/object (i.e., by not utilizing a switch or moving the cursor), the function associated with the icon/object upon which the cursor is "dwelling" is automatically activated", column 9, line 34-37).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kimble into Venolia because Venolia discloses a method of acquiring a cursor when the cursor is within a distance of an object and Kimble discloses a method of acquiring a cursor when the cursor is within a distance of an object after a period of time in order to easily access the object.

10.19 Claims 3-5, 12, 15-17, 23, 26-28 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Venolia and Kimble as applied to claim 1 above, and further in view of Newell et al. (5,123,087).

As per claim 3, Kimble demonstrated all the elements as applied in the rejection of independent claim 1, supra.

It is noted that Venolia and Kimble together do not explicitly disclose a linear entity, however, this is known in the art as taught by Newell et al., hereinafter Newell.

Newell discloses an interactive method in which the graphic object is a linear object (Figure 2A 201).

Thus, it would have been obvious to one of ordinary skill in the art to incorporate the teaching of Newell into Venolia and Kimble because Venolia and Kimble disclose automatic snapping of the object with a curser dwell within a range of the range for a time period and Newell disclose the object can be a linear object in order to make the application more versatile.

10.20 As per claim 4, Venolia, Kimble and Newell demonstrated all the elements as applied in the rejection of dependent claim 3, supra, and Newell further discloses the step of accepting a command to move the cursor away from the data point to extend the linear entity (Figure 10B 1003).

Thus, it would have been obvious to one of ordinary skill in the art to incorporate the teaching of Newell into Venolia and Kimble because Venolia and Kimble disclose automatic snapping of the object with a curser dwell within a range of the range for a time period and Newell disclose the object can be linear extended in order to make the application more versatile.

10.21 As per claim 5, Venolia and Kimble demonstrated all the elements as applied in the rejection of independent claim 1, supra.

Venolia and Kimble disclose automatic snapping of the object with a curser dwell within a range of the range for a time period. It is noted that Venolia and Kimble do not explicitly disclose the data point is selected from a group comprising: an endpoint; a midpoint; a node; a closest quadrant point; an insertion point; a point on a line tangent

to the object; and a point on a line that forms a normal from the object, however, this is known in the art as taught by Newell. Newell discloses a computer based solid modeler in which points are used to define an object ("Interesting points are any geometric entity, parameter, or location which is of interest to the draftsman; types include midpoints, endpoints, intersections, vertices, tangents, perpendiculars, arc centers, and arc quadrant points", column 4, line 45-49).

Thus, it would have been obvious to one of ordinary skill in the art to incorporate the teaching of Newell into Venolia and Kimble because Venolia and Kimble disclose a method of snapping an object and Newell discloses ways to define an object in order to make the object more versatile.

10.22 As per claim 12, Venolia and Kimble demonstrated all the elements as applied in the rejection of independent claim 1, supra.

Venolia and Kimble disclose automatic snapping of the object with a curser dwell within a range of the range for a time period, it is noted that Venolia and Kimble do not disclose the step of "accepting a command to move the cursor near a second data point on a second object; acquiring the second data point after the cursor remains near the second data point for the acquisition pause time; and aligning the first object and the second object according to the acquired first data point and the acquired second data point, however, this is known in the art as taught by Newell. Newell discloses an alignment method by selecting two intended object (see Figure 20S).

Thus, it would have been obvious to one of ordinary skill in the art to incorporate the teaching of Newell into Venolia and Kimble in order to easily align two objects.

10.23 As per claims 15-17 and 23, since these are directed to an apparatus for performing the method of dependent claims 3-5 and 12, therefore are similarly rejected as claims 3-5 and 12, respectively.

Regarding the "means plus function" language, the means refer to the software methods executed on generically disclosed hardware explicitly disclosed by Venolia, Kimble and Newell. It is further noted that both software and hardware means are functionally equivalent.

10.24 As per claims 26-28 and 34, since Kimble's disclosure contain memory and control program (Figure 2 50 and 51), they are directed to a program storage device, readable by a computer, therefore are identically rejected as claims 3-5 and 12, respectively.

(11) Response to Argument

a. Claims 36 and 38 are not anticipated by Venolia (5,463,722)

Appellant alleges Venolia teaches an aligning process, not acquiring process as claimed.

In reply, examiner refers to a standard definition of "acquire". In Merriam Webster's Collegiate Dictionary (Tenth Edition), "acquire" means:

> a: to come into possession or control of often by unspecified means
> b: to come to have as a new or added characteristic, trait, or ability.

Since aligning an object means the object under alignment process is under some form of control, the object under alignment is somehow acquired.

Furthermore, Venolia also teaches "the user drags a vertex of a displayed object towards the vertex of another object ..." (column 12, line 6-7) and "the vertex follows the cursor exactly" (column 12, line 21); since the vertex follows the cursor, the vertex is acquired by the cursor.

Therefore, both aligning an object and dragging a vertex qualify the process as acquiring.

As for the "modifier command", examiner also refers to a standard definition by Merriam Webster's Collegiate Dictionary (Tenth Edition):

modifier - one that modifies

modify – a: to make minor changes in
b: to make basic or fundamental changes in often to give a new orientation or to serve a new end

Since keyboard commands or menu selections are used for creating or breaking object alignments, they are modifier commands.

Venolia also discloses "The cursor 20 enables the operator to manipulate the position and orientation of a selected object. In the preferred embodiment of the present invention, pressing the mouse button and keeping it depressed when the cursor 20 is near the center of the displayed object 22 enables the user to positionally translate the object in accordance with the cursor 20" (column 10, line 9-15). Therefore, pressing a mouse button can also qualify as a modifier command; what ever happens to the object when the cursor moves near by, qualify as an acquiring process.

Appellant also alleges Venolia does not disclose selecting a data point of interest on a drawing object. By Merriam Webster's Collegiate Dictionary (Tenth Edition)

vertex - a: the point opposite to and farthest from the base in a figure
b: a point (as of an angle, polygon, polyhedron, graph, or network) that terminates a line or curve or comprises the intersection of two or more lines or curves

Since a vertex can be drag by a cursor, it certainly qualify as a data point of interest.

Appellant also alleges Venolia does not require the use of the keyboard or menu command as part of the "alignment" process. In reply, examiner cite Venolia –

"This capability would preferably include an interface selection such as, for example, keyboard commands or menu selections for creating and breaking such multiple object alignments" (column 22 line 8-14).

Creating object alignment implies object is not aligned before the keyboard command. Breaking object alignment implies object is aligned before the keyboard command. These are additional capabilities suggested by Venolia.

In the Reply Brief filed 3/14/2004, appellant alleges Venolia fails to teach "after a command is received to move a cursor near the data point". In reply, examiner consider the statement "the user drags a vertex of a display towards the vertex of another object displayed in a scene" (column 12, line 6-8) as a movement of a cursor, the dragged vertex is the cursor position (column 12, line 14), since the distance of "near" cannot be quantified, examiner consider movement around the distance of magnetic attraction is pretty near.

As for alleged only one vertex is under the control of the cursor, examiner consider a polygon has a plurality of vertices. If one vertex is dragged, the other vertices have to be dragged along, or the polygon will be deformed, therefore, when one vertex

of a polygon is acquired, a plurality of vertices, as well as the polygon is considered acquired.

Appellant alleges Venolia fails to disclose acquisition of the data point after a cursor moves near the data point. In reply, examiner considers the magnetic attraction process qualify as an acquiring process when the cursor moves near the data point (see column 12, line 6-30).

Appellant also alleges Venolia does not disclose acquisition of a data point only with a modifier command. Examiner considers the teaching "keyboard commands or menu selections for creating and breaking such multiple object alignments" satisfy the limitation.

In the Reply Brief filed 5/27/2004, appellant alleges that Vernolia teaches a vertex is dragged, but does not teach when or how a vertex is acquired. In reply, Examiner considers a vertex of a displayed object is dragged toward the vertex of another object based on the model of magnetic attraction (column 12, line 7-9). The magnetic attraction determines a region where an object is influenced or not. This influenced region is considered a region **near**by the data point. Since the claim limitation does not specify what kind of acquisition is done to the data point, examiner considers the alignment process as an acquiring process – "When point A moves within a certain distance I, of point B, point C is automatically drawn by the present invention into alignment with point B (column 12, line 28-30). Even though appellant does not agree that an alignment process is an acquiring process, the claim limitation does not prevent examiner from making such interpretation.

b. Independent claims 1, 13, 24 and 35 are patentable over Venolia (5,463,722) in view of Kimble (6,031,531).

Appellant alleges Venolia does not provide for moving the cursor near the first vertex and then acquiring the vertex after the cursor remains near the point for a pause time.

In reply, examiner notes, in Venolia, "the user drags a vertex of a displayed object towards the vertex of another object ..." (column 12, line 6-7) and "the vertex follows the cursor exactly" (column 12, line 21); since the vertex follows the cursor, by definition, the vertex is acquired by the cursor, and dragging is inherently a moving command. Note, a vertex is a point and is also part of an object; therefore, when the vertex moves, the associated object also moves.

Venolia also discloses "The cursor 20 enables the operator to manipulate the position and orientation of a selected object. In the preferred embodiment of the present invention, pressing the mouse button and keeping it depressed when the cursor 20 is near the center of the displayed object 22 enables the user to positionally translate the object in accordance with the cursor 20" (column 10, line 9-15).

Thus, the "acquiring" limitation is met by aligning or moving the object.

As for "acquisition pause time", it is inherent in the art that it takes time for the apparatus to execute a process after a command is issued. Since Venolia is silent about this fact, examiner used kimble's teaching to meet this limitation.

Appellant alleges Kimble's object is not equivalent to a drawing object as claimed. In response to applicant's argument that Kimble's reference is nonanalogous

art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Kimble's graphical object (icon) and Venolia's drawing object are image of objects manipulatable by a user.

Appellant argues Kimble's snapping to a location of an object is not acquiring. In reply, examiner content snapping an icon is a form of controlling the icon and, according to the definition, is acquiring.

Appellant alleges Kimble does not teach acquiring a data point or a drawing object. In reply, examiner relies on Venolia to meet the acquiring limitation; examiner relies on Kimble on the pause time limitation.

Appellant argues Kimble is not related to the invention other than an acquisition pause time. In reply, examiner note the icon is an image (object) can be snapped (acquired) after a pause time. Therefore, Kimble is in the same field as the invention.

Appellant alleges that there is no motivation or suggestion to combine the references. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kimble suggests his invention would allow computer user to quickly, easily, and efficiently access graphically displayed icons and other graphical objects (column 1, line 55-58).

In the Reply Brief filed 3/14/2004, appellant alleges the acquisition pause time is not based on processor speed, however, this not part of claim limitation. As for the field endeavor, since both Venolia and Kimble's applications apply to acquiring a cursor, they are analogous art.

In the Reply Brief filed 5/27/2004, appellant alleges examiner attempts to read into the "acquisition pause time", language that is inconsistent with the independent claims. In reply, examiner considers the claim limitation of an independent claim is not limited by its dependent claims.

In response to applicant's argument that the references fail to show "acquisition pause time", examiner considers the time between the first attempting to actual acquiring as acquisition pause time. Such interpretation is not prevented by the claim limitation.

c. Dependent claims 2, 14 and 25 are not separately argued.

d. Dependent claims 3, 4, 15, 16, 26 and 27 are not separately argued.

e. Dependent claims 5, 17 and 28 are not separately argued.

f. Dependent claims 6, 18 and 29 are not separately argued.

g. Dependent claims 7, 19 and 30 are patentable over Venolia (5,463,722) and Kimble (6,031,531).

Appellant alleges Kimble fails to describe a particular type of parameter to be used to determine an acquisition distance.

In reply, examiner notes "The size of the domains may also be altered, based on user preferences. The dimensions of the domains (i.e., circular, rectangular, vertically oriented for pull-down menu headings, etc.) may also be altered" (column 9, line 36-60). Therefore, the domain of the object can be altered. Since the size and dimension of the object can be changed, the acquisition distance from the edge of the object is also changed.

In the Reply Brief filed 3/14/2004 and 5/27/2004, appellant alleges Kimble does not teach the acquisition distance is determined in accordance to magnification of a view of the object and an object type. In reply, examiner considers it obvious that acquisition distance is magnified along with magnification of object.

h. Dependent claims 8, 20 and 31 are patentable over Venolia (5,463,722) and Kimble (6,031,531).

Appellant alleges Kimble fails to describe an annotation as an acquisition indicator.

In reply, examiners note "When cursor object 63 is moved into the area outlined by icon domain 65, cursor object 63 is immediately "snapped" to the center of icon 70" (column 7, line 37-39). By snapping the cursor to the center of the icon, the curser is considered an annotation indicating acquisition.

In the Reply Brief filed 3/14/2004 and 5/27/2004, appellant alleges Kimble does not teach annotating a data point. In reply, examiner asserts that when the cursor object is snapped to the center of icon, the icon is annotated.

i. Dependent claims 9, 10, 21, 22, 32 and 33 are patentable over Venolia (5,463,722) and Kimble (6,031,531).

Appellant alleges Kimble does not teach unacquiring the data point after the cursor remains near the acquired data point for an unacquisition pause time.

In reply, examiner notes Kimble teaches "after the cursor object has been "snapped" to the desired graphically displayed object or icon. The object then "snaps" (i.e., automatically moves) to the nearest neighboring icon or object" (column 10, line 19-22) and "the cursor object can be configured to "snap" to the nearest neighboring icon if the user does not move the cursor object away from the current icon after a specific time interval" (column 10, line 32-35). Thus, by snapping to nearby object, the cursor object is unacquired by the original object, and the unspecific time interval is the unacquisition pause time.

In the Reply Brief filed 3/14/2004 and 5/27/2004, appellant alleges Kimble does not teach un-acquiring a data point. In reply, examiner considers demagnetizing is an un-acquiring process.

j. Dependent claim 11 is patentable over Venolia (5,463,722) and Kimble (6,031,531).

Kimble teaches "the cursor object can be configured to "snap" to the nearest neighboring icon if the user does not move the cursor object away from the current icon

after a specific time interval" (column 10, line 32-35). Since the time interval is configurable by the user, the user can adjust the time interval to be different from the acquisition time interval.

In the Reply Brief filed 3/14/2004 and 5/27/2004, appellant alleges Kimble does not teach un-acquiring time is different from acquiring time. In reply, examiner considers it inherent to distinguish acquiring time from un-acquiring time for them not to be confused.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Ryan Yang
November 19, 2004

Conferees

Jeffery A. Brier JB

Michael Razavi MR